

**BOARD OF FORESTRY AND FIRE PROTECTION**

P.O. Box 944246  
SACRAMENTO, CA 94244-2460  
Website: [www.bof.fire.ca.gov](http://www.bof.fire.ca.gov)  
(916) 653-8007

**State Board of Forestry and Fire Protection****Notice of Public Comment Period**

and

**Findings Pursuant to Government Code Section 11346.1(b)****Emergency Rules to Minimize Natural Resource Damage and Spread of Sudden Oak Death****Notice Date: January 20, 2011**

The California State Board of Forestry and Fire Protection (Board) is promulgating an emergency regulation necessary to minimize natural resource damage and spread of Sudden Oak Death in the State's private timberlands, in accordance with existing statute PRC 4592, Emergency notice content. The proposed rule defines an Emergency Condition under 14 CCR §1052.1 and specifies the location, treatments, and environmental protection measures related to the removal of live and dead hardwood trees or vegetation infected by or susceptible to Sudden Oak Death disease. The rule allows filing an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of §1052.5, Emergency Notice for Outbreaks of Sudden Oak Death Disease. This action is being taken in accordance with Government Code 11346.1 and 11349.6 of the Administrative Procedures Act.

Comments on this emergency regulation may be provided by mail, courier, email or fax. **Comments must be received by 5:00 PM, January 26, 2011.** Comments should be addressed to:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Tel: (916) 653-9418  
Fax: (916) 653-0989  
Email: [board.public.comments@fire.ca.gov](mailto:board.public.comments@fire.ca.gov)

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

## **I. Finding of an Emergency**

The Board finds there is an emergency situation present with action needed for immediate preservation of the public peace, health and safety, and the general welfare. The emergency situation is found in the following:

The request for emergency regulation is to address the Sudden Oak Death disease caused by the introduced and invasive plant pathogen, *Phytophthora ramorum*. The disease/pathogen is an absolute killer of tanoak and several other oak species. The disease has been known to be in the state since 2000, but has not been affecting commercial timber. It has been generally limited to the forestlands of the wildland urban interface (WUI) around communities and towns. The limitation to non commercial forestlands recently changed in 2010. In 2010, the pathogen was found in the Redwood Creek Watershed in northern Humboldt County potentially affecting the State's most productive and valuable redwood and Douglas-fir forests along with ecologically critical tanoak forests in the Redwood National and State Parks. The disease's impact on tanoak is also a significant threat to important cultural values of the Hoopa Valley Tribe who also hold land in the Redwood Creek Watershed. This recent change is the primary reason why the emergency rule must be taken and was not necessary to be taken through nonemergency regulations prior to 2010.

Immediate action is needed to establish a tree harvesting permitting system to allow foresters and landowners to have tools to be able to respond quickly to the disease. By establishing the emergency regulation, foresters will have a new category of Emergency Notice regulation under 14 CCR 1052 to permit commercial harvesting of trees for purposes of isolating outbreaks of the disease, such as the situation in Redwood Creek. By harvesting and treating infected portions of the trees, along with nearby susceptible trees and vegetation, it is possible to control the spread of the pathogen prior to its introduction to critical natural resources.

### **Background:**

*Phytophthora ramorum* is established in some coastal California forests containing tanoak or live oak. Once established in a wildland environment, the pathogen expands its range by wind-driven rain, spreading its inoculum (largely sporangia) to nearby susceptible trees. Spread occurs mainly during warm spring rains. While localized spread is most common, sporangia have been shown to be blown up to 3 miles during large storm events.

The pathogen was first introduced to California forests sometime in the 1990s through the out-planting of infected nursery stock in three separate locations near San Francisco Bay (at Big Sur, Santa Cruz County and Mt. Tamalpais). By the time *P. ramorum* was identified as the causal pathogen of Sudden Oak Death in 2000, it had already spread to several hundreds of acres in each of these locations. Although many native California plants were later discovered to host the pathogen with varying degrees of damage, outright mortality is most common in tanoak and several red oak species.

The disease has continued to expand since 2000 and now is established in a series of small outbreaks that stretch from Brookings, Oregon on the north to Monterey County on the south. While the disease had not been affecting commercial timberlands and has generally been limited to the forestlands of the wildland urban interface (WUI) around communities and towns, that situation has recently changed. The pathogen has been found in the Redwood Creek

Watershed in northern Humboldt County, potentially affecting the State's most productive and valuable redwood and Douglas-fir forests along with ecologically critical tanoak forests in the Redwood National and State parks. This finding has demonstrated the need for more tools and resources to slow the spread and control the disease. While only 1% of the high risk habitat for the pathogen has been affected in Humboldt County, spot infections have been observed to serve as the mechanism for rapid explosions of the disease. For example, since 2004, the one known infection area in Humboldt County near Redway has grown at a rate of 1450 acres/year on average and now impacts over 10,000 acres.

These emergency rules are necessary for foresters and landowners to have tools to be able to respond quickly to the disease. If resources can be brought to bear on a new isolated spot, such as the situation in Redwood Creek, it is possible to control the pathogen. However, these actions require that we treat more than the symptomatic trees and need to include a buffer to address the individual trees that are not yet showing symptoms.

In the absence of this emergency rule, a forester can implement a control effort, but the effort cannot result in any commercial activity and is limited by a lengthy review process. This is a great hindrance as these control efforts require immediate action. Furthermore, they can be very expensive and without some return, few will be able to afford these needed efforts.

## **II. Other Findings**

- The Board finds that legislative mandates are provided in Public Resources Code 4750 et seq including "to the extent feasible, stop the spread of sudden oak death and conserve oak trees and other plant species affected by the disease", support the Board's action.
- The Board declares an emergency condition is found relating to existing and potential natural resource damage, degradation of cultural values, and threat to ecological values due to the infection and spread of Sudden Oak Death in the state's private timberlands. This finding is accordance with existing statute PRC 4592, Emergency notice; content.
- The Board finds that regulatory amendments, within the scope of existing legislation and the Forest Practice Rules (Title 14 CCR, Chapters 4, 4.5 and 10), are necessary to provide regulatory relief for expedited and cost effective treatments of SOD infected trees and vegetation.
- The Board finds that allowing filing of an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions creates regulatory relief.
- The regulation is applicable to locations on private land subject to the Forest Practice Act (PRC 4511 et seq.) in the Coast Forest District of the Forest Practice Rules (14 CCR 907) and other coastal counties where there is a lab tested confirmation of the presence of SOD. The geographic areas where the regulation can be implemented are the 14 counties in California currently affected the SOD disease. Also, Del Norte and San Luis Obispo counties are applicable locations because these counties have high or very risk of future infestations.
- The Board finds that there are potential adverse environmental effects associated with the emergency regulation. Included in the regulation are requirements developed to mitigate any potential adverse environmental to level of less than significant.

The primary potential adverse environmental impacts are related to potential widespread removal of infected or host hardwood tree species in watercourse and lake protection zones. Harvesting and removal of this material has the potential to create localized reduction of large woody debris that may in the future be used for in-stream ecosystem functions. Additionally, removal of host or infected hardwood trees in WLPZs and may reduce shade and microclimates which ameliorate the transfer of solar heat to fish bearing waters. The most prevalent situations for these types of potential adverse impacts would be in setting where SOD is widely spread near stream courses and the forest riparian vegetation is dominated by tanoak and or other hardwood tree species that are host for SOD and actively generate spores which can be transferred to other host species.

Other potential adverse environmental impacts, due to implementation of the regulation, are related to affects to the threatened northern spotted owl (*Strix occidentalis caurina*) (spotted owl), threatened marbled murrelet (*Brachyramphus marmoratus*) and their federally designated critical habitats. Impacts of actions similar to the proposed regulation, along with implications of impacts related to not implementing action to control the SOD, have been outlined in a Biological Opinion issued by the US Fish and Wildlife Service for SOD areas in southern Oregon in January of 2009. The Biological Opinion addresses potential impacts due to the implementation of Sudden Oak Death eradication activities that may affect listed species on public lands administered by the Rogue River–Siskiyou National Forest (Forest) and the Coos Bay District (District) Bureau of Land Management (FWS TAILS #: 13420-2009-F-0022).

The Board finds the regulation has incorporated mitigation measures that will eliminate or substantially lessen the identified potential significant adverse effects on the environment. Mitigation measures include:

- Compliance with all rules and regulations of the Forest Practice Act;
- Restriction from removal of conifer trees;
- Restrictions on operational methods and timing of operations used to harvest infected or susceptible trees (see 14 CCR 1052.5).
- Consultation with Cal Fire Pest Specialist prior to submission of the emergency notice to ensure harvesting is limited to necessary host an infected trees; site specific protection measures for the beneficial uses of water are developed; and appropriate sanitation measures are taken to avoid further spread of infected material as a result of the harvesting operations.
- Public trust agency project notification and opportunity for incorporating agency input into project design.

The Board finds the remaining unavoidable environmental impacts, if any, are acceptable in light of the environmental, economic, legal, social, and other considerations, because the benefits of the regulation outweigh the significant and adverse impacts. With implementation of these mitigations, effects will be substantially lessened or eliminated. However, all impacts may not be avoided, particularly related to impacts on wildlife habitat, visual screening, or localized protection of beneficial uses of water. If any impacts remain they are likely minor, and more than overridden by the catastrophic effects resulting from expansion of the Sudden Oak Death disease, subsequent loss of forested conditions, diminution of forest ecosystem values, and increased threat of wildfire due to increased dead fuel loading that threatens life, property, human health, and natural resources.

- The Board finds the regulatory action related to this declaration shall be implemented as an emergency regulation in accordance with the GC 11346.1 of the California Rulemaking Law of the Administrative Procedure Act. Such emergency rulemaking is necessitated by the findings described in this declaration. In accordance with the code, such regulation would be in effect for 180 days.

During this time frame, it is the intention of the Board to evaluate permanent regulations that address the emergency condition.

### **III. Authority and Reference**

Public Resources Code (PRC) 4551 authorizes the Board to adopt rules and regulation as it determines are reasonably necessary to enable, implement, interpret or make specific PRC 4592. PRC 4750, 4750.3, 4750.4 authorizes the California Department of Forestry and Fire Protection to implement programs to detect, remove and treat SOD infected trees.

### **IV. Informative Digest/Policy Statement**

The California State Board of Forestry and Fire Protection (Board) is promulgating an emergency regulation necessary to minimize natural resource damage and spread of Sudden Oak Death in the State's private timberlands, in accordance with existing statute PRC 4592, Emergency notice; content. The proposed rule defines an Emergency Condition under 14 CCR §1052.1 and specifies the location, treatments, and environmental protection measures related to the removal of live and dead hardwood trees or vegetation that are infected by or susceptible to Sudden Oak Death disease. The rule allows filing an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of §1052.5, Emergency Notice for Outbreaks of Sudden Oak Death Disease. This action is being taken in accordance with Government Code 11346.1 and 11349.6 of the Administrative Procedures Act.

### **V. Specific purpose of each regulatory section**

The specific purpose of the proposed rule is to 1) eradicate or control the spread of trees infected with or susceptible to Sudden Oak Death disease ; 2) allow filing of an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of §1052.5, Emergency Notice for Outbreaks of Sudden Oak Death Disease; 3) establish the terms and conditions for the operations for the removal of infected or susceptible trees and vegetation; and 4) establishes a permit form that will facilitates disclosure and evaluation of the project.

Section § 895 is amended to add the abbreviation of Sudden Oak Death (SOD). This is needed to ensure clarity and brevity of the terminology.

Section § 916.9 (t) (8) specifically allows harvesting of SOD infected or symptomatic trees from WLPZs using an emergency notice that would otherwise be prohibited by this section.

Section §1052 (a) establishes the agency form that must be submitted by the timber harvesting applicant. A form is needed to ensure disclosure of the emergency conditions and provide other information regarding the intent for a sanitation plan to prevent the spread of the disease. Section §1052.1(f) establishes the new emergency condition for SOD. An emergency condition must be defined and disclosed, in accordance to PRC 4592, prior to allowing operations to be permitted using an Emergency Notice. Subsections (1) – (4) limit the locations where SOD removals can occur to "isolated areas". The intent of permitting removal on isolated infection areas is to focus eradication and control action on new outbreaks, away from inundated areas, for purposes of controlling the outer perimeter of the spread to new previously uninfected watersheds. Subsection (5) identifies the specific counties where the emergency can be applied. This subsection limits use of the Notice to the

14 coastal counties in California where known outbreaks of the disease are found or have high risk of new outbreaks.

Section §1052.2 (a) lists SOD outbreaks as a presumption for the declaration of an emergency. This amendment is needed so the narrative provided by the RPF can discuss SOD for substantiating the emergency and filing of emergency notice. It identifies that confirmed SOD infections are a basis for meeting the “likely to die” criteria in 14 CCR 1052, and thus allowing uninfected but susceptible trees to be harvested under the Emergency Notice.

Section §1052.2 (b) is a reorganization of existing emergency conditions situations related to insect mortality. Amendments to this section are not related to the SOD emergency conditions are reorganized solely for clarity.

Section §1052.5 establishes the terms and conditions that the Registered Professional forester (RPF) must follow to implement an operation under the SOD Emergency Notice. Section §1052.5 (a) (1) states that there must be a laboratory test that confirms the presence of SOD.

Subsection §1052.5 (a)(2) is a requirement for the RPF to seek to encompass the entire area of new infestation in the Emergency Notice area of operations. This is needed to ensure effective control of new SOD outbreak areas.

Subsection §1052.5 (a)(3) establishes a requirement for concurrence with CAL FIRE which trees or vegetation should be removed and how the operation will control or avoid further spread of the disease as part of the operation.

Subsection §1052.5 (a) (4) requires the RPF to evaluate and incorporate habitat requirements to ensure compliance with State and Federal Endangered Species Acts.

Subsection §1052.5 (a) (5) limits the harvesting of trees to those hardwood trees infected with SOD or host hardwood trees and other vegetation within 330 feet of the infected trees or vegetation. This is needed to eradicate infected trees and to remove uninfected host trees near infected trees that may be infected, but not yet symptomatic of SOD.

Subsection §1052.5 (a)(6) generally restricts the harvest of conifer trees, as these trees are not the primary hosts of SOD and do not extensively spread the disease.

Subsection (b) establishes the operational and permit filing disclosure requirements for an RPF filing an Emergency notice for SOD. Subsection §1052.5 (b)(1) requires the RPF to provide notification of the proposed operation to public trust agencies who may provide input for the project to address potential adverse environmental impacts associated with the operation.

Subsection §1052.5 (b)(2) allows the removal of infected and susceptible host hardwood trees or other vegetation within a watercourse. This is needed to effectively waive the prohibition in the FPRs on intensive harvesting in WLPZs and prohibition of “in-lieu or alternative” practices that are typically not allowed for Emergency Notice operations pursuant to 14 CCR 1052 (c).

Subsection §1052.5 (b)(3)-(7) and (b)(9)-(11) establish the minimum operational restrictions and reporting requirements necessary to avoid significant adverse impacts to the environment.

Subsection §1052.5 (b)(8) establishes reforestation requirements for conifer trees should they be removed below certain stocking standards.

Subsection §1052.5 (c) requires disclosure of a sanitation plan that describes how equipment used in the operation will be cleaned to minimize the risk of spread of SOD to uninfected areas.

## **VI. Disclosures Regarding the Proposed Action**

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC §17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: None. The Board has determined that the proposed amendments will not have an adverse affect on small business. The proposed regulation is designed to provide regulatory relief, leading to substantial reduction in regulatory filing and preparation fees.
- The proposed rules do not conflict with or duplicate Federal regulations.

## **VII. Technical Information used in developing the Proposed Action**

1. Letter from United States Department of the Interior, California Department of Redwood Parks and Recreation, September 29, 2010.
2. Letter from Hoopa Valley tribal Council, dated September 28, 2010.
3. Letter from the University of California Humboldt County Cooperative Extension, dated October 4, 2010.

4. Summary titled: Mitigation measures to prevent the spread of sudden oak death during commercial timber operations under Department of Food and Agriculture regulation in zone of infestation, State Board of forestry and fire protection 2005.
5. Resolution: Declaration of revise zone of infestation for Sudden Oak Death, State Board of Forestry and Fire Protection. July 2004.
6. Sudden Oak Death Guidelines for Forestry, California Oak Mortality Task Force, April 2008.
7. Sanitation measures to minimize pathogen spread, California Oak Mortality Task Force.
8. Sudden Oak Death Best Management Practices in Zone of Infestation Regulated Area, California Oak Mortality Task Force, 2002.
9. Kliejuanas, J. United States Forest Service. August 2003. A Pest Risk Assessment of *Phytophthora ramorum* in North America.
10. California Department of Food and Agriculture plant quarantine manual sections 3700 Oak Mortality Disease Control, May 2008, and section 301.92, *Phytophthora ramorum* reported 2007.
11. Public Resources code 4750 et seq.
12. Biological Opinion addresses potential impacts due to the implementation of Sudden Oak Death eradication activities that may affect listed species on public lands administered by the Rogue River-Siskiyou National Forest (Forest) and the Coos Bay District (District) Bureau of Land Management (FWS TAILS #: 13420-2009-F-0022).
13. CAL FIRE FRAP. Map of Sudden Oak Death Zone of Infestation, January 2005.
14. USDA FS, State and Private Forestry-Forest health Protection. Sudden Oak Death and Oak Mortality in California. An Assessment of Sudden oak Death and Oak Mortality, 2000-2005.
15. Valachovic, Y. Nov. 2010. Background to exemption change for Sudden Oak Death. UC Cooperative Extensive Service.
16. Letter from California Central Valley Regional Water Quality Control Board, December 6, 2010.
17. Letter from California North Coast Regional Water Quality Control Board, December 6, 2010.
18. Letter from National Marine Fisheries Service, December 20, 2010.

end